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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DIAMOND RESORTS CORPORATION, a  
Maryland corporation; DIAMOND  
RESORTS HOLDINGS, LLC, a Nevada  
limited liability company; and DIAMOND  
RESORTS INTERNATIONAL, INC., a  
Delaware corporation,

Plaintiffs,

vs.

KYLE BROWN, an individual; MARTIN  
BROWN, an individual; EXCHANGE  
POINTS CLUB, LLC, a Florida and  
Missouri limited liability company;  
PREMIER REWARDS LLC, a Missouri  
limited liability company; VMG RESORTS  
LLC, a Missouri limited liability company;  
VACATION MANAGEMENT GROUP,  
LLC, a Missouri limited liability company;  
and OWNER EXTRAS LLC, a Missouri  
limited liability company,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

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1 For their complaint, Plaintiffs Diamond Resorts Corporation, Diamond Resorts  
2 Holdings, LLC, and Diamond Resorts International, Inc. (collectively, “Diamond”),  
3 through their attorneys Ballard Spahr, LLP, allege as follows:

4 **NATURE OF ACTION**

5 1. This is an action for trademark infringement, false designation of origin,  
6 and false advertising under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a)(1), as well as  
7 for deceptive trade practices under Nevada’s Deceptive Trade Practices Act, Nev.  
8 Rev. Stat. §§ 598, 598A et seq, and common law conversion.

9 2. Diamond is a collection of interrelated businesses that market and sell  
10 timeshare interests, manage resorts and multi-resort trusts, and operate points-  
11 based vacation clubs. Diamond is a global leader in the hospitality industry and one  
12 of the largest independent-branded vacation ownership businesses in the country. It  
13 is the owner of multiple marks in connection with those activities, including, as  
14 relevant here, the mark “DIAMOND RESORTS®,” and the mark “THE CLUB®.”

15 3. In tandem with its hospitality and management services, Diamond’s  
16 core business is the marketing and sale of timeshare interests to persons who want  
17 access to a vacation-ownership program (“Timeshare Program”) that provides  
18 flexibility in terms of the location, season and duration of their vacation. The  
19 purchasers of those timeshare interests (“Collection Members” or “Members”)  
20 acquire, through their purchase, “Points,” which act as currency that is exchangeable  
21 for occupancy rights in accommodations at resorts within their Timeshare Program  
22 and at other Diamond-affiliated resorts (collectively, the “Resorts”).

23 4. Defendants Kyle Brown and Martin Brown are, upon information and  
24 belief, the sole principals behind the five business-entity Defendants: Exchange  
25 Points LLC, PR Rewards LLC, VMG Resorts LLC, Vacation Management Group  
26 LLC, and Owners Extras, LLC (collectively, “Defendants”). The Browns’ businesses  
27 are related to a particular segment of the timeshare industry called “exchange  
28 networks,” which provide a mechanism for timeshare owners to use their timeshare

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1 interests for something other than vacation stays at accommodations within their  
2 own timeshare program. *Some* exchange networks run perfectly legitimate  
3 businesses, which, with the cooperation and authorization of the timeshare  
4 companies, permit timeshare owners to reserve accommodations outside of their  
5 particular timeshare program. The Browns' businesses, however, are *not* legitimate.

6         5. On the contrary, Defendants have engaged in deceptive and illicit  
7 schemes designed to profit at the expense of Diamond and Collection Members. As  
8 explained in detail below, those schemes have involved an ongoing campaign of  
9 telephonic advertisements, in which, making use of Diamond's marks and other  
10 deceptive means to falsely suggest affiliation with Diamond, Defendants have  
11 attempted to trick Collection Members into turning over control of their Points to  
12 Defendants in direct violation of the governing documents for their Timeshare  
13 Program. Defendants are then using Members' Points to reserve Resort  
14 accommodations for *their* customers, employing Diamond's marks and other  
15 misleading representations in order to falsely hold themselves out as authorized  
16 wholesale distributors of vacation stays at the Resorts. And, to make matters worse,  
17 Defendants are charging Collection Members a substantial up-front fee for the  
18 "service" of renting out their Points on their behalf, even though Defendants have no  
19 authorization to rent out anyone's Points, and, upon information and belief,  
20 Defendants end up returning little, if any, of the proceeds from those unauthorized  
21 transactions back to the Collection Member.

22         6. Defendants' willful and dishonest schemes have caused, and are  
23 continuing to cause, substantial and immediate harm to Diamond. First, by  
24 misappropriating Diamond's marks to falsely suggest affiliation with Diamond, and  
25 making false representations to Collection Members about what they can do with  
26 their Points, Defendants are irreparably disrupting Diamond's relationship with  
27 Collection Members, who are being scammed out of money by a company they believe  
28 to be affiliated with Diamond, as well as fundamentally misled about the nature of

1 their Timeshare Program. Second, by using Members' Points to reserve Resort  
 2 accommodations for *their* customers, Defendants are diverting vacationers away from  
 3 Diamond, who otherwise could gain access to such accommodations only through  
 4 Diamond. Third, Diamond has had to expend significant resources investigating  
 5 Defendants' schemes, as well as attempting to counteract the effects of those schemes  
 6 on Diamond's business reputation.

7 7. Thus, Diamond seeks relief from this Court in the form of an  
 8 accounting, monetary damages consisting of disgorgement of all of Defendants' ill-  
 9 gotten gains, attorneys' fees, and – most importantly – preliminary and permanent  
 10 injunctive relief barring Defendants from continuing to carry out their schemes.

#### 11 **PARTIES, JURISDICTION AND VENUE**

##### 12 **A. The Plaintiffs**

13 8. Plaintiff Diamond Resorts Corporation ("DRC") is a Maryland  
 14 corporation with its principal place of business located at 10600 West Charleston  
 15 Boulevard, Las Vegas, Nevada 89135. DRC is the parent company and sole owner of  
 16 all of Diamond's "development entities," which are the business entities that enter  
 17 into contracts with Collection Members for the purchase and sale of Points. Because  
 18 DRC is the 100% owner of all of Diamond's development entities, it ultimately  
 19 subsumes all the losses incurred by its underlying development entities, including, as  
 20 relevant here, all losses caused by Defendants' scheme.

21 9. Plaintiff Diamond Resorts Holdings, LLC ("DRH") is a limited liability  
 22 company organized under the laws of the State of Nevada with its principal place of  
 23 business located at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135. It  
 24 is the parent company of DRC, and the owner of all of the Diamond marks at issue in  
 25 this lawsuit.

26 10. Plaintiff Diamond Resorts International, Inc. ("DRI") is a Delaware  
 27 corporation with its principal place of business located at 10600 West Charleston  
 28

1 Boulevard, Las Vegas, Nevada 89135. DRI is the parent company and sole owner of  
2 DRH.

3 **B. The Defendants**

4 11. Defendant Kyle Brown is an individual who resides in the State of  
5 Missouri. Upon information and belief, he, along with Defendant Martin Brown, are  
6 the architects behind the business-entity Defendants, and the illicit schemes  
7 described herein.

8 12. Defendant Martin Brown is an individual who resides in the State of  
9 Missouri. Upon information and belief, he, along with Defendant Kyle Brown, are  
10 the architects behind the business-entity Defendants, and the illicit schemes  
11 described herein.

12 13. Defendant Exchange Points Commission, LLC (“Exchange Points”) is  
13 registered as a limited liability company in both the State of Florida and the State of  
14 Missouri. Its Florida registration lists its address as 6965 Piazza Grande Avenue,  
15 #218, Orlando, Florida 32835, and identifies Kyle Brown as its manager. Attached  
16 hereto as **Exhibit 1** is a true and correct copy of Exchange Points’ Florida Annual  
17 Report for 2018. Exchange Points’ Missouri registration lists its principal place of  
18 business as 22 Gravois Station, House Springs, Missouri 63051, and identifies Kyle  
19 Brown as its organizer. Attached hereto as **Exhibit 2** is a true and correct copy of  
20 Exchange Points’ Missouri Articles of Organization.

21 14. Defendant Premier Rewards LLC a/k/a PR Rewards (“PR Rewards”) is a  
22 Missouri limited liability company. Like Exchange Points, it lists its principal place  
23 of business as being at 22 Gravois Station, House Springs, Missouri 663051. Upon  
24 information and belief, its only two members are Defendants Martin Brown and Kyle  
25 Brown. The Articles of Organization for PR Rewards list its email address as  
26 “[exchangepointsclub@gmail.com](mailto:exchangepointsclub@gmail.com),” which is the same email address listed for  
27 Exchange Points in its Articles of Organization. Attached hereto as **Exhibit 3** is a  
28 true and correct copy of Premier Rewards’ Articles of Organization. PR Rewards

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1 appears to have recently changed its name to Member Perks LLC, but the publicly  
2 available organizational documents indicate that it remains the same legal entity.

3 15. Defendant VMG Resorts LLC (“VMG Resorts”) is a Missouri limited  
4 liability company with its principal place of business located at 10650 Keystone  
5 Drive, Blackwell, Missouri 63626. Upon information and belief, its sole member is  
6 Defendant Martin Brown. Attached hereto as **Exhibit 4** is a true and correct copy of  
7 VMG Resorts’ Articles of Organization.

8 16. Defendant Vacation Management Group, LLC (“Vacation Management  
9 Group”) is a Missouri limited liability company. Like Exchange Points and PR  
10 Rewards, it lists its principal place of business as 22 Gravois Station, House Springs,  
11 Missouri 663051. Vacation Management Group is the parent company of both PR  
12 Rewards and VMG Resorts. Upon information and belief, Vacation Management  
13 Group’s sole member is Defendant Martin Brown. Attached hereto as **Exhibit 5** is a  
14 true and correct copy of Vacation Management Group’s Statement of Change of  
15 Business Office Address.

16 17. Defendant Owner Extras LLC (“Owner Extras”) is a Missouri limited  
17 liability company. Like Exchange Points, PR Rewards, and Vacation Management  
18 Group, it lists its principal place of business as 22 Gravois Station, House Springs,  
19 Missouri 663051. Upon information and belief, Owners Extras’ sole member is Kyle  
20 Brown. The Articles of Organization for Owners Extras list its email address as  
21 being “[info@vmgresorts.com](mailto:info@vmgresorts.com),” which is the same email address listed for VMG  
22 Resorts in its Articles of Organization. Attached hereto as **Exhibit 6** is a true and  
23 correct copy of Owner Extras’ Articles of Organization.

24 **C. Jurisdiction and Venue**

25 18. This Court has subject matter jurisdiction over this matter under 28  
26 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs  
27 and Defendants and the amount in controversy exceeds \$75,000.  
28

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19. Alternatively, this Court has subject matter jurisdiction over the claims grounded in the Lanham Act under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), and can exercise subject matter jurisdiction over the Nevada state law claims pursuant to 28 U.S.C. § 1367(a), as those claims are so related to the claims asserted under federal law as to form part of the same case or controversy.

20. This Court may properly exercise personal jurisdiction over Defendants because this action arises out of Defendants' purposeful contacts with the State of Nevada, including their (a) directing infringing advertising and promotional communications at Nevada residents, (b) engaging in schemes designed to divert sales from Plaintiffs, which are businesses located and/or incorporated in Nevada, (c) holding themselves out as affiliated with Plaintiffs, which are businesses located and/or incorporated in Nevada, (d) wrongfully converting Plaintiffs' and their affiliates' exclusive right to engage in the commercial rental of Resort accommodations through the use of Points under the governing documents for the Collections, which are businesses located and/or incorporated in Nevada, and (e) engaging in schemes executed in significant part by deceptively gaining access to Collection Members' online owner portal accounts, which are hosted and managed by a Diamond affiliate in Nevada ("Member Portal Accounts").

21. Venue is proper in this Court pursuant 28 U.S.C. § 1391(b)(2) because, as described above and below, a substantial part of the events giving rise to Diamond's claims took place in this District.

### **FACTS COMMON TO ALL COUNTS**

#### **A. The Diamond Marks**

22. Since its founding in 1996, Diamond has grown into one of the largest and well-known hospitality companies in the world, with more than 109 properties that are part of the Collections (as defined below), managed by Diamond affiliates, or otherwise Diamond-branded, and 268 affiliated resorts and hotels throughout the continental United States and Hawaii, Canada, Mexico, the Caribbean, Europe, Asia,



Australia, and Africa. Presently, Diamond provides hospitality services to more than 400,000 Members worldwide.

23. A crucial part of Diamond's success has been building up the Diamond brand. During its more than two decades of existence, Diamond has invested considerable time and expense in marketing its brand, including its associated marks, to establish wide-spread recognition of, and goodwill for, the Diamond brand among the consuming public, including Collection Members.

24. Diamond's timeshare and hospitality programs are all marketed under Diamond's marks, which DRI owns through its wholly owned subsidiary DRH. These include various marks incorporating the word "Diamond®," as well as the mark "The Club®," which, as explained below, Diamond uses to denote certain specific Member exchange programs and services that it offers.

25. As relevant here, Diamond's marks (the "Diamond Marks") include the following federally registered marks:

<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
2,411,329	DIAMOND RESORTS INTERNATIONAL	December 5, 2000	IC 042: Hotel Services.
2,432,190	DIAMOND RESORTS INTERNATIONAL	February 27, 2001	IC 036: Real estate time sharing services.
3,746,815	DIAMOND RESORTS	February 9, 2010	IC 036: real estate equity sharing, namely, managing and arranging for co-ownership of real estate; real estate time-sharing; vacation real estate time share exchange services; vacation real estate time-sharing.



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<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
4,361,959	DIAMOND RESORTS INTERNATIONAL	July 2, 2013	IC 035: Real estate sales management; managing and operating hotels of others.
4,805,164	DIAMOND PLUS POINTS	September 1, 2015	IC 035: Incentive programs for credit card users, namely, providing gift cards, merchandise, and travel awards for credit card use as part of a customer loyalty program.  IC 036: Credit card services; incentive programs for credit card users, namely, providing cash and rebates for credit card use as part of a customer loyalty program.
3,566,128	THE CLUB	January 20, 2009  <u>Date of First Use:</u> September 30, 2007	IC 36: Real estate equity sharing, namely, managing and arranging for co-ownership of real estate; Real estate services, namely, rental of short-term furnished apartments; Real estate time-sharing; Vacation real estate time share exchange services; Vacation real estate time-sharing; Vacation real estate timeshare

<u>Registration Number</u>	<u>Trademark</u>	<u>Registration Date</u>	<u>Description of Good and/or Services</u>
			services.

True and correct copies of each of the foregoing registrations are attached hereto as **Exhibits 7-12.**

26. The Diamond Marks are distinctive and signify to the consuming public, including Collection Members, that products and services that come from Diamond are reliable, trustworthy, and of high quality.

27. Diamond uses the Diamond Marks in its advertising and promotional materials, including its website, its brochures and catalogues, and its print and online advertising. In addition, Diamond uses the Diamond Marks in its communications with Collection Members to signal that the communication is coming from Diamond.

#### **B. The Timeshare Programs**

28. Diamond's operations consist of two interrelated businesses: (a) timeshare interest sales and financing, which includes the marketing and sale of timeshare interests and consumer financing for Collection Members; and (b) hospitality and management services, which includes management of resort properties and trusts, operation of vacation ownership clubs and resort amenities, and the provision of other hospitality and management services.

29. A Collection Member typically receives an annual or bi-annual allotment of Points in exchange for its payment of the purchase price.<sup>1</sup> That Member is then able to use their Points to reserve accommodations at the Resorts or to

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<sup>1</sup> Diamond also offers non-timeshare trial packages called "Samplers," which do not come with renewable Points, but rather one-time use points that expire after a set period.

1 reserve accommodations or book other travel-related benefits outside of their  
2 Collection if the Collection Member is a member of an exchange program.

3 30. Members purchase Points in specific “Collections,” each of which  
4 constitutes an independent Timeshare Program that includes multiple resort  
5 locations. For instance, a Member could purchase Points within the Diamond  
6 Resorts U.S. Collection, in which case that Member would be able to use their Points  
7 to reserve vacation stays at Resorts within that Collection, which are located  
8 throughout the continental United States, as well as St. Maarten.

9 31. Within each Timeshare Program, Points are personal to the Collection  
10 Member. That is, Collection Members use their Points through their particular  
11 membership accounts, usually reserving their vacation stays online through their  
12 Member Portal Account. As part of that system, Collection Members are not  
13 permitted to employ their Points for a commercial – rather than personal – use.  
14 Collection Members can, however, permit their “guests” – *i.e.*, friends and family – to  
15 enjoy vacation stays at the Resorts via their Points, provided that the Collection  
16 Member personally makes the reservation with his or her own Points, and then  
17 provides the names of the guests who will be using the reservation.

18 32. As part of their membership, each Collection Member is required to pay  
19 annual maintenance fees. These fees cover operating expenses and capital reserves  
20 for the Members’ Collection, including, but not limited to, operation of the  
21 reservation system; Member publications; independent exchange program affiliation  
22 fees; invoicing and collecting maintenance fees; providing administrative services;  
23 assessments levied by owners associations for Resorts within the Collection;  
24 maintenance, repair modification, alteration, redecoration or replacement of each  
25 Collection accommodations, the furnishings therein, and the common areas of  
26 Resorts within the Collection; insurance coverage; capital contributions for reserves;  
27 domestic services, including cleaning and maid service; noticing and conducting  
28 association meetings; and obtaining management, accounting, legal, or other

1 professional services. The fees are paid directly to the non-profit members  
2 association for that Member's Collection.

3 33. In addition, Members have access to "exchange networks." For instance,  
4 Diamond has an internal exchange network called "The Club®," a name that  
5 Diamond has trademarked for that purpose. That program allows Collection  
6 Members to exchange their Points to reserve accommodations outside of their  
7 Collection, as well as for other travel-related benefits, such as cruises.

8 34. There are also independent exchange companies outside of Diamond,  
9 which allow timeshare owners to trade their timeshare interests within their  
10 timeshare program for rights to reserve accommodations within other timeshare  
11 programs. The two most prominent independent exchange companies are Interval  
12 International ("II") and Resort Condominiums International ("RCI"). II is currently  
13 an authorized exchange network for the Diamond Collections through an affiliation  
14 agreement between The Club® and II. That means that Collection  
15 Members participating in The Club® are able to exchange their Points through II for  
16 rights to reserve accommodations in other cooperating timeshare programs. RCI is  
17 not currently an authorized exchange network for Collection Members, but it is for  
18 other timeshare programs, and is well known throughout the industry.

19 35. Finally, when Diamond has access to unsold or otherwise unused  
20 inventory at the Resorts, it will attempt to rent such inventory to persons who are  
21 not Collection Members or use such inventory for other sales and marketing purposes  
22 Collection Members may also rent one-time-use Points from Diamond for purposes of  
23 specific vacation plans in any given year.

24 36. Thus, to be permitted to stay at accommodations that are part of a  
25 Collection, a person must be one of the following: (a) a Collection Member (or a  
26 permitted guest or family member of a Collection Member), (b) an owner of a  
27 different timeshare interest who reserved accommodations at a Resort through an  
28

1 exchange program, or (c) someone who rented accommodations directly from  
2 Diamond.

3 **C. Defendants' Unlawful Schemes**

4 37. Diamond has recently discovered that Defendants have been engaged in  
5 various schemes in which they sell and facilitate access to accommodations within  
6 the Resorts to their customers, even though Defendants are not, in fact, authorized to  
7 do so, and the persons to whom they are selling and facilitating this access are not  
8 permitted users of such Resort accommodations.<sup>2</sup>

9 38. Because the principal means of reserving stays at the Resorts – Points –  
10 are in the hands of Collection Members, who are not permitted to rent those Points  
11 for commercial purposes, Defendants' schemes hinge on their ability to trick  
12 Collection Members into giving Defendants control of their Points. Thus, Defendants  
13 have engaged in a campaign of misleading telephonic advertisements to Collection  
14 Members designed to obtain control of their Points.

15 39. Although, as set forth below, the details of those sales calls vary, the  
16 basic structure of the sales pitch remains the same. During the call, a representative  
17 from one of the Defendants purports to be calling *about* the Member's Collection  
18 account with Diamond. In some of the instances of which Diamond presently aware,  
19 the caller has explicitly and falsely represented that he or she is affiliated with  
20 "Diamond" or "The Club" (which is operated by a Diamond affiliate) or the equity  
21 sponsors of Diamond. In other such instances, the caller has falsely represented that  
22 he or she is affiliated with "II" or "RCI," or made some other misleading  
23 representation. In all such known instances, however, the caller has falsely  
24 represented himself or herself as someone in rightful possession of insider knowledge  
25 of the details of the Collection Member's account (and, in many cases, insider  
26

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27 <sup>2</sup> Defendants also appear to be selling and facilitating occupancy at vacation  
28 properties associated with timeshare companies other than Diamond.

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1 knowledge about purported *problems* with the account), as well as someone who can  
2 make representations to Collection Members about what they can and cannot do with  
3 their Points.

4 40. After falsely representing to the Collection Member that he or she is  
5 affiliated with Diamond (or else affiliated with an entity, such as II or RCI, which  
6 conceivably *might* be authorized to serve as a legitimate exchange company for the  
7 deposit of Points), the caller then proposes the following transaction: the caller's  
8 company will rent the Member's Points, in exchange for an up-front broker's fee, and  
9 then, when the Member receives its portion of the proceeds from those transactions,  
10 it can then apply the proceeds to its maintenance fees. To complete the proposed  
11 transaction, the Member is required not only to pay the up-front fee, but also to give  
12 over the password and other log-in details to his or her Member Portal Account,  
13 permitting Defendants to use that account to reserve accommodations at the Resorts  
14 on behalf of *their* customers.

15 41. Thus, Defendants' schemes have two parts. First, Defendants have  
16 gained access to Resort accommodations by falsely representing themselves to  
17 Collection Members as authorized to rent their Points on their behalf, and  
18 advertising to them programs in which Defendants will rent their Points for a fee.  
19 Second, Defendants are providing their customers with access to Resort  
20 accommodations, falsely holding themselves out as authorized wholesalers of such  
21 accommodations, and using access to the Member Portal Account and control of their  
22 Points to make reservations they are providing to their customers.

23 42. As explained below, the first part of the scheme appears to be carried  
24 out primarily by Exchange Points, PR Reward, and Owner's Extras, while the second  
25 part of the scheme is carried out by VMG Resorts and Vacation Management Group.

26 43. On information and belief, all of the conduct described herein by those  
27 entities described herein has been carried out at the personal direction of Defendants  
28 Kyle Brown and Martin Brown.

1                   i.       *Defendants' Websites*

2           44.    Though, as described below, much of Defendants' schemes have involved  
3 telephone solicitations of Collection Members that Defendants no doubt intended to  
4 remain secret, some of it has been conducted out in the open on their websites.

5           45.    For instance, until it was recently changed in response to a cease-and-  
6 desist letter from Diamond, the promotional website for Exchange Points laid out  
7 both parts of the company's scheme. The website included a page describing what it  
8 calls its "Maintenance Reimbursement Program" for timeshare owners. That page  
9 stated that: "For Club owners that already have Points or can't use them, enrolling  
10 as a Club member will save you more than ever. As long as you are an active Club  
11 member, you can deposit any of your Points that you will not use and the Club will  
12 pay you for your maintenance fees on those points!" In addition, page used  
13 Diamond's marks to falsely imply that Exchange Points is an authorized depository  
14 for Points, referencing a "Diamond VIP Member Payout" and a program called "Club  
15 Diamond" that "price matches your original maintenance fees." A true and correct  
16 screen shot of that page of Exchange Points' webpage is attached hereto as **Exhibit**  
17 **13**.

18           46.    The other end of the scheme, where Exchange Points sells and  
19 facilitates access to Resort accommodations to *its* customers, was made clear on a  
20 separate page of the Exchange Points website labeled "Exchange Points Club |  
21 Getting Started." That page stated that "Exchange Points Club delivers this  
22 exclusive Club membership package, where you are able to get the Points, travel  
23 deals, member benefits, and exceptional prices without having to own vacation  
24 property. *By enrolling in a Club membership, you get all of the benefits, discounts*  
25 *and inventory available to timeshare owners without having to own a timeshare.*" A  
26 true and correct screen shot of that page of Exchange Points' webpage is attached  
27 hereto as **Exhibit 14**. The "FAQ" page of the Exchange Points website also made this  
28 clear, stating that it "is able to provide customers these Points packages and benefits



1 without all of the costs and obligations that come from buying a timeshare.” A true  
2 and correct screen shot of that page of Exchange Points’ webpage is attached hereto  
3 as **Exhibit 15**.

4 47. The website for PR Rewards also advertised a program for renting  
5 Points, until it was likewise changed in response to Diamond’s cease-and-desist  
6 letter. Its home page prominently featured the “Diamond Resorts” logo, and touted  
7 that it is “currently managing” roughly 1.8 million Points. The website further  
8 stated that: “We guarantee that your points/weeks will be rented and you will be paid  
9 for your points/weeks in a timely manner.” In addition, the website offered three  
10 tiers for Collection Members: “Silver,” where the Member supposedly gets “50%” of  
11 all rental proceeds, “Gold,” where the Member supposedly gets “55%” of all rental  
12 proceeds, and “Platinum,” where the Member supposedly gets “60%” of all rental  
13 proceeds. A true and correct screen shot of the PR Rewards homepage is attached  
14 hereto as **Exhibit 16**.

15 48. While PR Rewards does not itself appear to be selling and facilitating  
16 access to accommodations within the Resorts, that role is being performed by VMG  
17 Resorts through Vacation Management Group. Vacation Management Group is the  
18 owner of both PR Rewards and VMG Resorts, as indicated on its website, a true and  
19 correct screen shot of which is attached hereto as **Exhibit 17**. VMG Resorts holds  
20 itself out as a “vacation resort wholesaler offering member exclusive resorts to the  
21 general public at a fraction of the cost,” as indicated on its website, a true and correct  
22 screen shot of which is attached hereto as **Exhibit 18**.

23 49. Many of the accommodations that are offered through the VMG Resorts  
24 website are part of the Resorts. For instance, the below images are of Resorts  
25 included in listings on the VMG Resorts website:

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ii. *Defendants' Telephonic Advertisements*

50. The part of Defendants' scheme where they have obtained control of Collection Members' Points has been primarily conducted through misleading telephonic advertisements directed at Collection Members.

51. The bulk of the telephone solicitations of which Diamond is presently aware have come from the number "844-385-0276," which Exchange Points lists as

1 its phone number on its website. Some Collection Members have, however, received  
2 calls originating from Owners Extras and PR Rewards.

3 52. In these telephone solicitations, Defendants have attempted to enroll  
4 Collection Members in two programs: "Maintenance Fee Reimbursement" and "Club  
5 Elite" programs. Both of those programs involve the Member (a) paying an up-front  
6 membership fee, and (b) depositing his or her Points with Defendants in exchange for  
7 a promise of payment to be applied to that Member's maintenance fees.

8 53. Attached hereto as **Exhibit 19** is a true and correct copy of a form  
9 Agreement that has been furnished to multiple Collection Members, with the specific  
10 identifying information redacted. As relevant here, the agreement provides as  
11 follows:

12 a. While Exchange Points "will handle all details involved with the  
13 rentals, including but not limited to; advertising, receiving incoming calls and emails,  
14 checking availability, [and] pricing reservations," the Collection Member's role is  
15 *"simply [to] provide the required points and guest certificates for the reservations."*  
16 In other words, the Collection Members who enter into this agreement are required  
17 to supply Exchange Points with not only access to their Points, but also "guest  
18 certificates" to permit the persons Exchange Points uses the Points to make  
19 reservations for to check-in at the Resort.

20 b. In addition, the agreement forbids the participating Collection  
21 Member from cancelling a reservation that Exchange Points makes through the  
22 Member's account, and also requires the Member to notify Exchange Points if the  
23 Member gets into a dispute with Diamond that could lead to that Member losing  
24 access to his or her account. In particular, the agreement states that "if we are  
25 locked out of your account due to non-payment or dispute with Diamond, this  
26 agreement will be null and void, and owner could be liable for damages on lost guest  
27 reservations. *Always notify us in advance of any dispute with Diamond, so we can*  
28 *move our reservations out of your account."*

c. The agreement also requires the Member to give Exchange Points control of his or her Member Portal Account, stating: *“Upon payment of the sums set forth above to Owner, the Exchange Points Club shall have the right to access Owner’s Account within the reservation/points system maintained by Diamond for the purpose of making reservations and rentals, communicating with Diamond and otherwise transacting all business related to the Points as the Owner would.”*

d. The agreement requires the participating Collection Member to pay Exchange Points \$1,495 in order to enroll in the “Maintenance Fee Reimbursement” program.

e. Finally, the agreement states that “Club member understands that the Maintenance Reimbursement is handled solely by Exchange Points Club. **NOT AN RCI/Diamond PRODUCT.**” That is the only indication Exchange Points provides that it is not affiliated with either Diamond or RCI. Up to that point in the sales transaction, Exchange Points leads the Collection Members to believe that the programs being offered are sponsored by, or otherwise affiliated with, Diamond.

54. Though the sales calls Collection Members have received from Defendants have all centered on a proposal for reimbursement for the Members’ Points, they have varied in *who* the caller has claimed to be affiliated with. Collection Members have received calls purporting to be coming from (a) “Diamond,” (b) “Diamond Resorts,” (c) “Member Services with Diamond Resorts,” (d) “The Club,” (e) “Club Services regarding your Diamond Points account,” (f) “Diamond’s Travel Services Department,” (g) “Owner’s Extras for Diamond,” (h) “Interval International,” (i) “RCI,” (j) “RCI Points,” and (k) various entities supposedly affiliated with Diamond’s equity sponsors. In one instance, a Collection Member was contacted by someone at the Exchange Points number purporting to be from “RCI Services,” who later connected her with someone who described himself as her “Diamond Counselor,” and falsely explained that the programs he was offering were new to Diamond and had come about as a result of changes in Diamond’s ownership

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1 structure. *All* of those representations of affiliation with an entity other than  
2 Exchange Points were false.

3 55. In other sales calls to Collection Members, Defendants' salespeople have  
4 implied that the caller was not only affiliated with Diamond, but calling about a  
5 specific problem with that Collection Member's account. Thus, multiple Members  
6 have received such calls purporting to be from "The Club" or "RCI" in which the  
7 caller has claimed to be calling about an "issue" with the Member's account, and, in  
8 particular, the fact that the Member has not been using all of his or her Points. And,  
9 multiple Collection Members have been left official-sounding voicemail messages  
10 from someone at the Exchange Points number, which have stated: "This is [name]  
11 from Club Services calling regarding your Points account. We have a couple of  
12 notices here."

13 56. The purpose of these false representations is to confuse the Collection  
14 Member into believing that the proposal to rent the Member's Points for a fee is  
15 coming from and/or authorized by Diamond, and is, accordingly, permissible under  
16 the terms of Diamond's agreements with Collection Members and the governing  
17 documents for the Member's Collection.

18 57. Collection Members who entered into agreements with Defendants have  
19 received notices indicating that their Points have been used to make reservations for  
20 non-Collection Members. These notices have been coming from Defendant VMG  
21 Resorts, even though the sales calls have all been coming from Exchange Points, PR  
22 Rewards, or Owners' Extras. In fact, one Collection Member was provided copies of  
23 the contract the Member eventually signed through an online portal hosted by the  
24 website for Defendant VMG Resorts (specifically, at the URL  
25 <https://www.vmgportal.com/vmg-contracts/epc-diam.php>).

26 58. Upon information and belief, the solicitations described above represent  
27 only a small percentage of the actual solicitations made by that company to  
28 Collection Members. Diamond only learns about such solicitations when such

1 Members come to Diamond with their concerns, which will only be a small subset of  
2 those actually contacted.

3 59. Upon information and belief, most, if not all, of the Collection Members  
4 who have paid Defendants upfront fees have received no proceeds from the purported  
5 rental of their Points.

6 60. Upon information and belief, Defendants are privy to unauthorized  
7 inside information about Collection Members and are using that information to  
8 target members who have large reserves of unused Points.

9 **D. Injuries to Diamond**

10 61. Defendants' conduct has caused, and is causing, direct and immediate  
11 harm to Diamond. This harm has taken multiple forms.

12 62. For instance, Defendants' conduct is causing irreparable harm to  
13 Diamond's relationship with Collection Members. Collection Members are being led  
14 to believe that the programs Defendants are trying to get them to enroll in for a hefty  
15 fee are coming from, or at least affiliated with, Diamond. When those programs do  
16 not work out as promised – and, in particular, when the Collection Member does not  
17 get its up-front payment returned, let alone the profits promised – that harms the  
18 goodwill Diamond has built up with Collection Members. In addition, Defendants'  
19 representations that the transactions they are proposing to Collection Members are  
20 authorized and permissible are undermining Diamond's ability to manage the  
21 Collections.

22 63. In addition, Defendants' unauthorized commercial rental of Resort  
23 accommodations is diverting vacationers from Diamond to Defendants. The persons  
24 renting accommodations within the Resorts through Defendants could otherwise only  
25  
26  
27  
28



1 participate in such a vacation stay either by (a) purchasing Points, or (b) renting the  
2 accommodations from Diamond.<sup>3</sup>

3 64. Finally, Defendants' conduct has required Diamond to expend  
4 significant resources uncovering their schemes and attempting to undo the damage  
5 they are causing to Diamond's relationship with the Collection Members.

6 **D. Diamond's Attempts to Resolve the Issues**

7 65. On January 4, 2019, Diamond, through its undersigned counsel, sent a  
8 cease-and-desist letter to Defendants Kyle Brown and Martin Brown regarding the  
9 conduct described herein. A true and correct copy of that correspondence is attached  
10 hereto as **Exhibit 20**. In that letter, Diamond asked that Defendants cease all  
11 infringing activity and provide a thorough accounting of their activities with regard  
12 both to Collection Members and selling access to the Resorts.

13 66. Shortly thereafter, Defendant Kyle Brown reached out to undersigned  
14 counsel. Defendant Kyle Brown represented that Defendant Exchange Points was no  
15 longer an ongoing business. At the time this representation was made, Exchange  
16 Points still had an active website that advertised affiliation with Diamond and was  
17 listed as an active business in both Missouri and Florida. (Later the references to  
18 Diamond on the Exchange Points website were removed.)

19 67. In discussions with undersigned counsel, Defendant Kyle Brown further  
20 represented that his businesses had stopped actively soliciting Diamond's Collection  
21 Members for the use of their Points, explaining that they no longer considered that  
22 line of business to be profitable. No proof was furnished to support that  
23 representation. In fact, Diamond has continued, as of the date of this filing, to  
24 receive reports from Collection Members about the conduct described herein.

25  
26  
27 <sup>3</sup> Because the persons renting the Resort accommodations through Defendants  
28 are not timeshare owners, they would not be able to make reservations through an  
exchange company such as II.



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68. In addition, Defendant Kyle Brown pointedly refused to direct his businesses to stop engaging in the second part of the schemes described herein – the use of Member Portal Accounts to book stays at resorts for Defendants’ customers. While Defendant Kyle Brown acknowledged that his businesses had no right to access Diamond’s internal booking system through Collection Members’ accounts or Member Portal Accounts, he said the fault for that rested exclusively with the Collection Members themselves, whom he accused of falsely representing that they were permitted to provide Defendants with such access. As of this writing, the website for Defendant VMG Resorts continues to display images of Resorts and promote access to those Resorts through VMG Resorts.

69. Finally, Defendant Brown refused Diamond’s demand that he identify (a) the Collection Members who provided his businesses with access to their Points, (b) the dates and locations of every vacation stay at a Resort that his businesses facilitated or received compensation for facilitating, or (c) the information he and/or his businesses acquired about Collection Members’ accounts and Member Portal Accounts and how they acquired it.

70. On information and belief, the schemes described herein are still being enacted, notwithstanding any representations that have been made.

**COUNT I**  
**(Trademark Infringement– 15 U.S.C. §1114)**

71. Diamond repeats and realleges the allegations set forth in Paragraphs 1 through 70 above as if set forth fully herein.

72. Diamond owns the exclusive rights to the “Diamond Resorts” name, as well as all of the Diamond Marks listed above. At no time did Diamond authorize Defendants to use any of Diamond’s marks.

73. Notwithstanding Diamond’s well-known and prior common law and statutory rights in the Diamond Marks, Defendants have, with actual and constructive notice of those rights, used those marks in interstate commerce in

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1 conjunction with both (a) their marketing of their various commercial rental  
2 programs for Collection Members' Points, and (b) their marketing and sale of access  
3 to the Resorts.

4 74. Defendants' use of the Diamond Marks without the authorization of  
5 Diamond is not only likely to deceive and cause confusion among those targeted by  
6 the deceptive sales communications, but actually has caused such confusion. In  
7 particular, Collection Members have been deceived by Defendants' use of the  
8 Diamond Marks into believing that the telephone solicitations they have received  
9 from Defendants are coming from Diamond itself, or else an entity affiliated with  
10 Diamond. In addition, the consumers who have reserved accommodations at the  
11 Resorts through Defendants have been deceived by Defendants' use of the Diamond  
12 Marks into believing that Defendants are authorized wholesale distributors of  
13 vacation stays at the Resorts.

14 75. Defendants' conduct has caused, and, if not enjoined by this Court, will  
15 continue to cause, irreparable harm to Diamond in that it is undermining Diamond's  
16 relationship to the Collection Members and causing Diamond to lose control of its  
17 brand.

18 76. Defendants' conduct has caused, and, if not stopped, will continue to  
19 cause, monetary injury to Diamond in the form of both the diversion of business from  
20 Diamond to Defendants, and the taking on of the costs of investigating, and  
21 attempting to counteract, Defendants' conduct. The amount of such economic  
22 damages is not presently ascertainable, but will be proven at trial.

## 23 COUNT II

### 24 (False Designation of Origin – 15 U.S.C. § 1125(a)(1)(A))

25 77. Diamond repeats and realleges the allegations set forth in Paragraphs 1  
26 through 76 above as if set forth fully herein.

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1           78. Diamond owns the exclusive rights to the “Diamond Resorts” name, as  
2 well as all of the Diamond Marks listed above. At no time did Diamond authorize  
3 Defendants to use any of Diamond’s marks.

4           79. Defendants have engaged in a campaign of telephonic advertisements in  
5 which they have falsely represented to Collection Members that the commercial  
6 rental programs they are attempting to get the Collection Members to enroll in are  
7 affiliated with Diamond, and, therefore, permissible. These false representations  
8 have taken the form not only of unauthorized use of the Diamond Marks, but also  
9 claims to be affiliated with Diamond’s equity sponsors or with exchange companies  
10 with which Diamond might do business, as well as more general suggestions that the  
11 solicitations are coming from an entity with insider knowledge of, and authority over,  
12 the Collection Member’s Points.

13           80. In addition, Defendants, in selling and facilitating occupancy of  
14 accommodations within the Resorts, have falsely held themselves out as authorized  
15 wholesale distributors of vacation stays at the Resorts. They have done this through  
16 the use the Diamond Marks, as well as separate false promises and warranties they  
17 have made.

18           81. Such false claims of affiliation with Diamond are not only likely to  
19 deceive and cause confusion among the targets of the deceptive sales  
20 communications, but actually have caused such confusion. In particular, Collection  
21 Members have been deceived by Defendants’ false representations into believing that  
22 the telephone solicitations they have received from Defendants are coming from  
23 Diamond itself, or else an entity affiliated with, or authorized to do business on  
24 behalf of, Diamond. In addition, the consumers who have reserved stays at the  
25 Resorts through Defendants have been deceived by Defendants’ false representations  
26 into believing that Defendants are authorized wholesale distributors of vacation  
27 stays at the Resorts.

28           82. These false representations have been made in interstate commerce.

84. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of both the diversion of business from Diamond to Defendants, and the taking on of the costs of investigating, and attempting to counteract, Defendants' conduct. The amount of such economic damages is not presently ascertainable, but will be proven at trial.

**(False Advertising – 15 U.S.C. § 1125(a)(1)(B))**

86. Defendants have engaged in a campaign of telephonic advertisements directed at Collection Members in which, in an effort both to extract payment from Collection Members and gain control of the Members' Points for commercial rental, Defendants are making a series of material misrepresentations to Collection Members. In particular, Defendants are falsely representing (a) that they are affiliated with and/or acting on behalf of Diamond, (b) that the programs in which they are attempting to enroll Collection Members are permissible under the terms of those Members' agreements with Diamond and the governing documents for their Collection, and (c) that the Collection Member will receive significant monetary returns for surrendering control of their Points to Defendants.

88. These false representations have been made in interstate commerce.

92. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of both the diversion of business from Diamond to Defendants, and the taking on of the costs of investigating, and attempting to counteract, Defendants' conduct. The amount of such economic damages is not presently ascertainable, but will be proven at trial.

**(Deceptive Trade Practices – Nev. Stat. §§ 598, 598A et seq.)**

95. Those practices have involved (a) falsely claiming or implying affiliation with Diamond to Collection Members, (b) falsely representing to Collection Members that there are certain “problems” with their Collection accounts that Defendants are authorized to help them with, (c) falsely promising to Collection Members significant returns in exchange for providing an upfront fee for surrendering control of their Points, and (d) falsely representing to its customers that they are authorized wholesale distributors of vacation stays at the Resorts.

98. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form both of the diversion of business from Diamond to Defendants, and of the costs of investigating, and attempting to counteract, Defendants' conduct. The amount of such economic damages is not presently ascertainable, but will be proven at trial.

(Common Law Conversion)

102. Defendants have engaged in such conduct with malice, that is, with knowledge that they lacked any authority to access Diamond's online reservations system or to sell and facilitate access to accommodations within the Resorts and, thus, full awareness that such conduct was contrary to Diamond's ownership rights.

103. Defendants' conduct has caused, and, if not stopped, will continue to cause, monetary injury to Diamond in the form of the diversion of rents from Diamond to Defendants.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court enter an Order against Defendants as follows:

1. Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them, from:
  - a. using any Diamond Marks, or otherwise engaging in any further advertising or promotion – whether in print, email, telephonically, on their websites, or otherwise – that *either* (a) suggests an affiliation with Diamond, *or* (b) suggests that any of Defendants is authorized as a wholesale distributor of vacation stays at the Resorts or has authority to facilitate or otherwise sell access to the Resorts;
  - b. holding themselves out as authorized depositories, managers, or renters of Points; and
  - c. using, or attempting to use, Collection Members' Points or Member Portal Accounts obtained through their schemes to sell and/or facilitate access to vacation stays at the Resorts;
2. Awarding Diamond disgorgement of Defendants' profits;
3. Awarding reasonable attorney's fees pursuant to 15 U.S.C. § 1117 and Nev. Rev. Stat. § 41.600;
4. Awarding Diamond its costs in bringing the action;
5. Awarding Diamond punitive damages; and



1           6.       Awarding any further relief that this Court deems just and proper.

2       Dated: February 6, 2019.

3                               BALLARD SPAHR LLP

4  
5       By: /s/ Abran E. Vigil  
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